

REMARKS

Applicant's counsel thanks the Examiner for the careful consideration given the application. Claims 1, 6 and 8 have been amended and new claims 11-13 have been added. Basis for the amendment to claim 1 is found at page 5 last line to page 6 line 2. The basis for claim 11 can be found at page 6, lines 3-5. The basis for claim 12 can be found at page 6, line 6. The basis for claim 13 can be found at page 6, line 7. The claims introduce the new feature that an individual brush is used for each segment of the intestine.

Novelty

Applicant argues that the feature of using, in the process of collecting prokaryotes from the small intestine, an individual brush for each segment is not taught in M. Alander et al.

The teaching indicated by the Examiner in Alander et al. clearly cites in the section regarding brushing: *"Biopsies were taken from the ascending, transverse and descending colon (three parallel samples were taken from each location)."* (p. 362, first column, second paragraph, last line) Thus there is no teaching of individual brushes being used for each segment, only that three parallel samples were taken.

As claim 11 is novel, applicant argues that by analogy all dependent claims and products thereof are also novel.

Non-obviousness

The prior art cited, Alander et al., teaches biopsing from the colon with a brush for collecting bacteria.

The new feature of the process according to the present invention is that individual brushes are used to biopsy the tissue containing the bacteria from the separate segments of the small intestine, thus one brush contains bacteria from only that one specific segment.

This feature allows the process to collect and then culture and grow strains, which under the previous method would have been contaminated by bacteria deriving from other segments of

the bowels being biopsied. Said contaminating bacteria can eliminate some bacteria being sampled by simply growing in a more competitive manner in the medium on which they are cultured after being sampled. The large number of bacteria collected by the biopsies with separate brushes can be clearly seen in the varied species of bacteria analysed in Step 2 of the Example described in the Application.

As taught at page 5, lines 13-19 of the current Application, the solution to the technical problem of recovering and isolating novel probiotic strains from specific segments characterizing the various tracts of the intestinal gut, thus reducing contamination with bacteria deriving from other segments of the intestine - is beneficial.

There is nothing in Alander et al. to suggest that to isolate and collect the differing bacteria from the differing and corresponding tissues, one should use separate individual brushes, and thus it is apparent that the invention is non-obvious as well as novel and is accordingly allowable.

The dependent claims are allowable as depending from an allowable base claim.


With the most recent Office action, the Examiner returned an initialled copy of applicant's Form PTO-1449. However, applicant notes that the first two references, being a U.S. patent publication and a European patent, were not initialled through oversight. Applicant is enclosing a clean copy of the Form PTO-1449 originally submitted and requests that the Examiner return a copy with the next communication wherein each of these two references is initialled.

Since all of the claims are now in condition for allowance, a Notice of Allowance is respectfully requested.

If any further fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. BUG5-39568.

Respectfully submitted,

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| Form PTO-1449 | U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE | ATTY. DOCKET NO. 39568 | INTL. SERIAL NO. PCT/IB2004/002446 |
| INFORMATION DISCLOSURE CITATION BY APPLICANT (USE SEVERAL SHEETS IF NECESSARY) | | APPLICANT: Giovanni Mogna et al. | |
| | | INTL. FILING DATE: July 30, 2004 | GROUP ART UNIT: |

U.S. PATENT DOCUMENTS

| Examiner Initial | | Document No. | Date | Name | Class | Subclass | Filing Date If Appropriate |
|------------------|---|-------------------|--------|-------------|-------|----------|----------------------------|
| | A | 2001/014322 A1 | 8/2001 | Chen et al. | | | |
| | B | | | | | | |

FOREIGN PATENT DOCUMENTS

| | | Document No. | Date | Country | Class | Subclass | Translation |
|--|---|--------------|--------|---------|-------|----------|-------------|
| | C | EP 0 861 905 | 9/1998 | EPO | | | |
| | D | | | | | | |

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)

| | |
|---|---|
| E | ALANDER M. et al., "Recovery of Lactobacillus rhamnosus GG from human colonic biopsies", LETTERS IN APPLIED MICROBIOLOGY, vol. 24, no. 5, 1997, pages 361-364; XP001204562, ISSN: 0266-8254, abstract, page 362 - left-hand column, paragraph 2. |
| F | DATABASE WPI, Section Ch, Week 200445, Derwent Publications Ltd., London, GB; Class B04, AN 2004-472329; XP002312255 & JP 2004 180656 A (MATSUMOTO S), July 2, 2004, abstract & Patent Abstracts of Japan, vol. 2003, no. 12, December 5, 2003 & JP 2004 180656 A (UEDA TORU; MATSUMOTO SATOSHI), July 2, 2004, abstract & JP 2004 180656 A (UEDA TORU; MATSUMOTO SATOSHI), July 2, 2004. |
| G | DATABASE WPI, Section Ch, Week 200039, Derwent Publications Ltd., London, GB; Class B04, AN 2000-450059, XP002312256 & RU 2 139 070 C1 (SHENDEROV B A), October 10, 1999, abstract & RU 2 139 070 C (SHENDEROV BORIS ARKAD EVICH), October 10, 1999. |
| H | SAARELA M. et al., "Probiotic bacteria: safety, functional and technological properties", BRAUWELT, NUERNBERG, DE, Journal of Biotechnology, vol. 84, no. 3, December 28, 2000, pages 197-215; XP004314235, ISSN: 0168-1656, the whole document. |
| I | JONG S.C. et al., "Probiotics for Humans and Animals", ATCC QUARTERLY NEWSLETTER, ROCKVILLE, MD., vol. 1, no. 13, 1993, pages 1-2, 10-11; XP002072789, ISSN: 0894-9026, the whole document. |
| J | VON WRIGHT Atte et al., "The survival and colonic adhesion of Bifidobacterium infantis in patients with ulcerative colitis", INTERNATIONAL DAIRY JOURNAL, vol. 12, no. 2-3, 2002, pages 197-200; XP009042095, ISSN: 0958-6946, abstract, the whole document. |
| K | POXTON I. R. et al., "Mucosa-associated bacterial flora of the human colon", JOURNAL OF MEDICAL MICROBIOLOGY, vol. 46, no. 1, 1997, pages 85-91; XP002312254, ISSN: 0022-2615, abstract, page 86 - left-hand column, paragraph 3. |

Examiner:

Date Considered

*Examiner: Initial if reference considered, regardless of whether citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.